

**DEC 29 2008**

**PATENT  
Application 09/843,289  
Attorney Docket 2005P12928US (1120-005)**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant(s)            **Atwater, Antonio**  
Application            **09/843,289**  
Confirmation           **7918**  
Filed                   **24 April 2001**  
Application Title       **Method and Apparatus For Receiving Full-Motion Digital Video  
Multi-Casts, Interactive Data and Interactive Voice Via A DSL  
Circuit**  
Art Unit                **2416**  
Latest Examiner       **Nguyen, Phuongchau Ba**

**Mail Stop AF**

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

**PRE-APPEAL BRIEF REQUEST FOR REVIEW**

Applicant requests review of the final rejection of claims 25-100 presented in the Office Action mailed on 31 July 2008 (the "Final Office Action") as well as the Advisory Action mailed on 25 November 2008 (the "Advisory Action"). No amendments are being filed with this request. A Notice of Appeal accompanies this request.

The review is requested for the reason(s) stated below:

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1. Independent Claims 25, 46, 58, 75, and 81

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establishes a *prima facie* case of obviousness.

Independent claim 25, from which each of claims 26-45 ultimately depends states, *inter alia*, yet no evidence is of record that the applied portions of the relied-upon references, alone or in combination, teach or enable, "sending to the subscriber unit a response to the received request with an indication of the identified channels, **the response being sent using HTTP protocol** and identifying the IP multicast group assigned to each identified channel".

Independent claim 46, from which each of claims 47-57 ultimately depends, states, *inter alia*, yet no evidence is of record that the applied portions of the relied-upon references, alone or in combination, teach or enable, "receiving from a subscriber unit a request for a list of available channels, **the request** including information identifying a subscriber and **being sent using HTTP protocol**".

Independent claim 58, from which each of claims 59-74 ultimately depends states, *inter alia*, yet no evidence is of record that the applied portions of the relied-upon references, alone or in combination, teach or enable, "sending to the subscriber unit a response to the received request with an indication of the identified channels, **the response being sent using HTTP protocol** and identifying the IP multicast group assigned to each identified channel".

Independent claim 75, from which each of claims 76-80 ultimately depends, states, *inter alia*, yet no evidence is of record that the applied portions of the relied-upon references, alone or in combination, teach or enable, "sending to the subscriber unit a response to the received request with an indication of the identified channels, **the response being sent using HTTP protocol** and identifying the IP multicast group assigned to each identified channel".

Independent claim 81, from which each of claims 82-100 ultimately depends states, *inter alia*, yet no evidence is of record that the applied portions of the relied-upon references, alone or in combination, teach or enable, "sending to the subscriber unit a response to the received request with an indication of the identified channels, **the response being sent using HTTP protocol** and identifying the IP multicast group assigned to each identified channel".

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Rather than providing proper evidence that the applied portions of the relied-upon references teach or enable, whether alone or in combination, the “request” or the “response” “being sent using HTTP protocol”, the Final Office Action merely alleges, at Page 4:

Monteiro discloses a method and apparatus for providing audio and/or visual communication services in real time to a multiplicity of identifiable user on communication network, such as Internet (0002 & 0004).

The Advisory Action admits that “Rogers does not explicitly disclose the request being sent using HTTP protocol”, yet provides no explanation of how any of the cited portions of the relied-upon references, whether alone or in combination, teach and enable the “request” or the “response” “being sent using HTTP protocol”.

Thus, even if there were proper evidence of obviousness presented in the Office Action (an assumption that is respectfully traversed), and even if there were a reasonable expectation of success in combining or modifying the applied portions of the references relied upon in the Office Action (another assumption that is respectfully traversed), no substantial evidence has been presented the applied portions of the references relied upon in the Office Action, **as attempted to be modified and/or combined**, expressly or inherently teach every limitation of these independent claims or their dependents, and consequently the Office Action fails to establish a *prima facie* case of obviousness for any present claim of this application. Consequently, for at least the reasons mentioned above, reconsideration and withdrawal of these rejections is respectfully requested.

**2. Claims 30, 62, 81, and 85**

Each of dependent claims 30, 62, and 85 states, *inter alia*, yet no evidence is of record that the applied portions of the relied-upon references, alone or in combination, teach or enable, “wherein an indication that a channel is made available by a content provider is **sent using a session announcement protocol**”.

Independent claim 81 states, *inter alia*, yet no evidence is of record that the applied portions of the relied-upon references, alone or in combination, teach or enable, “via a channel server, **sending** to the subscriber unit a response **via session announcement protocol** with an indication of the identified channels”.

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Thus, even if there were proper evidence of obviousness presented in the Office Action (an assumption that is respectfully traversed), and even if there were a reasonable expectation of success in combining or modifying the applied portions of the references relied upon in the Office Action (another assumption that is respectfully traversed), no substantial evidence has been presented the applied portions of the references relied upon in the Office Action, **as attempted to be modified and/or combined**, expressly or inherently teach every limitation of these claims, and consequently the Office Action fails to establish a *prima facie* case of obviousness. Consequently, for at least the reasons mentioned above, reconsideration and withdrawal of these rejections is respectfully requested.

### 3. Claim 94

Dependent claim 94 states, *inter alia*, yet no evidence is of record that the applied portions of the relied-upon references, alone or in combination, teach or enable, "wherein the subscriber is identified using a media access control address".

Responsive to the argument presented in the Advisory Action, Applicant notes that no evidence has been presented that DeSimone's "multicast IP address" is equivalent to the claimed "media access control address".

Thus, even if there were proper evidence of obviousness presented in the Office Action (an assumption that is respectfully traversed), and even if there were a reasonable expectation of success in combining or modifying the applied portions of the references relied upon in the Office Action (another assumption that is respectfully traversed), no substantial evidence has been presented the applied portions of the references relied upon in the Office Action, **as attempted to be modified and/or combined**, expressly or inherently teach every limitation of claim 94, and consequently the Office Action fails to establish a *prima facie* case of obviousness. Consequently, for at least the reasons mentioned above, reconsideration and withdrawal of these rejections is respectfully requested.

### 4. All Claims

Moreover, both the Final Office Action and the Advisory Action fail to provide evidence of obviousness as required under KSR. For example, no evidence is provided that the claimed

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subject matter **would have occurred in the ordinary course** without real innovation or that the combination would have been obvious to a person with ordinary skill in the art. The present Office Action fails to evidence an art-recognized **reason that would have prompted** a person of ordinary skill in the relevant field to combine the elements **in the way the claimed new invention does**. Instead, the present Office Action merely provides impermissible conclusory statements. Because the present Office Action fails to present substantial evidence that one of ordinary skill **would** recognize that alleged reason for making the particular claimed combination and does not evidence the reason to be art-recognized, the stated reason **must be** based on hindsight. Thus, the present Office Action fails to provide a rational underpinning to support the legal conclusion of obviousness. The rejection of these claims cannot be sustained based upon the mere conclusory statements of the present Office Action.

For at least these reasons, a reconsideration and withdrawal of each of the rejections of claims 25-100 is respectfully requested.

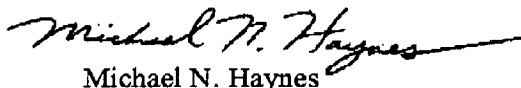
CONCLUSION

It is respectfully submitted that, in view of the foregoing remarks, the application is in clear condition for allowance. Reconsideration, withdrawal of all grounds of rejection, and issuance of a Notice of Allowance are earnestly solicited.

The Office is hereby authorized to charge any additional fees or credit any overpayments under 37 C.F.R. 1.16 or 1.17 to Deposit Account No. 50-2504. The Examiner is invited to contact the undersigned at 434-972-9988 to discuss any matter regarding this application.

Respectfully submitted,

Michael Haynes PLC



Michael N. Haynes

Date: 26 December 2008

Registration No. 40,014

1341 Huntersfield Close

Keswick, VA 22947

Telephone: 434-972-9988

Facsimile: 815-550-8850